

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KEITH ROSE,)	
)	
Plaintiff,)	
)	No. 4:18-cv-1568-RLW
v.)	
)	
CITY OF ST. LOUIS, etc., et al.,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO VACATE ORDERS ECF 102, 103, 104

Defendants herein respectfully move the Court to vacate its orders [ECF 102, 103, 104] granting leave to file a third amended complaint and denying defendants' motion for judgment on the pleadings. In support of this motion, defendants state:

1. On May 29, 2020, plaintiff filed a motion [ECF 84] for leave to file a third amended complaint. Defendants timely filed their opposition to the motion [ECF 86].
2. On September 4, 2020, plaintiff renewed the motion for leave to file a third amended complaint, submitting a revised third amended complaint. [ECF 101, 101-1].

3. On September 17, 2020, this Court entered non-docket orders granting plaintiff's motion for leave to file the revised third amended complaint and denying defendants' pending motion for judgment on the pleadings directed to the second amended complaint. [ECF 102-103.]

4. E.D.Mo. Local Rule 4.01(B) provides:

Except as otherwise provided in these rules or by order of the Court, each party opposing a motion (other than a motion seeking an extension of time) must file, within fourteen (14) days after service of the motion, a single memorandum containing any relevant argument and citations to authorities on which the party relies. If any memorandum in opposition requires consideration of facts not appearing in the record, the party must file with its memorandum all documentary evidence relied upon. Each opposition to a motion seeking an extension of time must be filed within seven (7) days after service of the motion.

4. Defendants oppose the renewed motion for leave to amend.

Defendants previously advanced substantial and meritorious arguments in opposition to the prior version of the third amended complaint and intended to briefly re-state their opposition to the revised third amended complaint.

Defendants submit that the motion for leave to amend is not well taken and attach hereto the memorandum in opposition that was to be filed today. The unexpected ruling of the Court has prevented defendants from presenting their arguments to the Court.

5. Defendants' counsel express their regret if they misread the local rules or this Court's requirements, but defendants' counsel calculated that their response

to the motion for leave to amend was due today. Defendants submit that fairness and the rules warrant that this Court vacate its improvident orders of September 17, 2020, and consider the merits of defendants' opposition to the motion for leave in accordance with the rules.

WHEREFORE defendants move that this Court vacate its orders ECF 102, 103, and 104 and take plaintiff's motion [ECF 101] under submission for consideration of defendants' memoranda in opposition.

Respectfully submitted,
JULIAN L. BUSH
CITY COUNSELOR
/s/ Robert H. Dierker
Robert H. Dierker 23671(MO)
Associate City Counselor
dierkerr@stlouis-mo.gov
Abby Duncan 67766(MO)
Associate City Counselor
Amy Raimondo 71291(MO)
Assistant City Counselor
314 City Hall
1200 Market St.
St. Louis, MO 63103
314-622-3361
Attorneys for Defendants